

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA LOCAL 110**

And

Case: 14-CD-153807

U.S. SILICA COMPANY

and

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO, LOCAL 513**

U.S. SILICA'S POST-HEARING BRIEF IN SUPPORT OF CHARGE # 14-CD-153807

U.S. Silica Inc., ("U.S. Silica" or "Company") operates a sandstone mining operation and processing facility in Pacific, Missouri. The Company employs approximately 40 individuals, represented by two unions. Thirty-six employees are bargaining-unit members of the Laborers International Union of North America, Local 110 ("Laborers" or "Local 110") while four employees are bargaining-unit members of the International Union of Operating Engineers, Local 513 ("Operating Engineers" or "Local 513"). Both unions have claimed work related to the operation of a new piece of equipment, purchased by the Company in March 2015. The Track Mobile is a machine that can operate on railroad tracks with steel wheels and has rubber tires to maneuver over paved and dirt roads. The operation of this machine is at the core of the current dispute.

The Company purchased the Track Mobile to improve safety and aid its Sand Loaders and Utility Operators,¹ in moving and filling railcars with sandstone for customers around the country. Once filled, each railcar weighs approximately 250,000 pounds. Sand Loaders and Utility Operators previously moved and loaded these railcars using only gravity and hand brakes.

¹ Sand Loaders and Utility Operators are classifications covered by the collective bargaining agreement and Laborers Local 110.

The Track Mobile is a tool, provided to Sand Loaders and Utility Operators to more safely and efficiently perform their normal work. Local 513 filed a grievance on March 30, 2015 demanding that the Track Mobile be operated by Local 513 members. Local 513 has demanded arbitration on this matter. In response to this grievance and demand for arbitration, Local 110 notified the Company that any attempt to remove the work from Local 110 members would cause a picket. These actions created a jurisdictional dispute and forced the Company to file an Unfair Labor Practice charge under Section 8(b)(4)(D) of the Act.

The Company prefers that Local 110 continue to operate the Track Mobile as outlined in great detail below. The Company believes Local 110's contract conforms to its preference to have Local 110 perform the work. There are significant safety and training protocols in place for moving railcars at the facility, already known and understood by Local 110 members who have moved railcars around the facility for decades. It is significantly more efficient to have Local 110 use the Track Mobile within their normal duties loading the railcars. Any attempt to use one of the current Local 513 employees or to hire another Local 513 employee would cause significant cost and logistical issues for the Company.

Evidence was taken before a hearing officer at Region 14 on June 30, 2015. During that hearing, Local 513 did not contest any evidence put into the record by the Company and Local 110 regarding the use of the Track Mobile. While Local 513 claimed they have never demanded the work and therefore there is no jurisdictional dispute, their actions and their grievance support the exact opposite conclusion. Local 513's post-hearing disclaimer is also ineffective and should be ignored by the Board. For all the reasons outlined below, the Company requests that the Board determine that U.S. Silica's decision to award the work to Local 110 is proper.

I. BACKGROUND AND FACTS OF DISPUTE

A. *Jurisdiction*

The Parties stipulated that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act (BX. 2).² The parties also stipulated that the Engineers and Laborers are labor organizations within the meaning of Section 2(5) of the Act (*Id.*).

B. *Material Facts Not in Dispute.*

U.S. Silica operates a mining facility in Pacific, Missouri (Tr. 11-12). The facility operates twenty-four hours per day, seven days a week (Tr. 16), and covers approximately 530 acres of land (Tr. 12). Sandstone is mined using explosives in the mine area (Tr. 13; CX 1, shown as Letter A). Once the sandstone is drilled and the explosives break it loose from the face of the mine, Operating Engineers use a piece of equipment to move the sandstone for transport (Tr. 13). Four members of Operating Engineers Local 513 are employed at the facility and across three shifts (Tr. 12, 15). Each works in the mine area itself (Tr. 15; CX 1, shown as Letter A). Next, the sandstone is impacted with high-pressure water, forced into a pump and moved via pipeline to the processing plant (Tr. 13). The sandstone travels for over a mile, both above ground and below ground through the pipeline to the processing plant (Tr. 14). Once at the processing plant, the sandstone is processed and loaded for transport by members of Laborers Local 110 (Tr. 16; CX 1, shown as Letter B). U.S. Silica employs approximately 36 members of Local 110 across three shifts (Tr. 16).

Once the mining is completed and the sandstone slurry is pumped from the mine to the plant, the slurry goes into a raw sand tank, which is basically a storage tank (Tr. 14). From there the sand is sized, separating coarse from fine sand (*Id.*). At that point the sand goes through a

² Throughout the Brief Board Exhibits will be referred to as BX ___, Joint Exhibits as JX ___, Company Exhibits as CX ___, and Charged Party Exhibits as CPX ___.

heating process to remove any moisture. Next the sandstone is sized again and it moves to a storage silo (*Id.*). Once the sand is in the storage silo it either goes through a milling process for products like paint, toothpaste and dental implants (*Id.*). Or, the whole grain sand goes directly from the storage silo to customer trucks or into railcars for shipment (Tr. 15). The facility also loads trucks sent directly to the port of St. Louis for loading on to barges (Tr. 24).

Bordering the facility to the South is Route 66 (Tr. 16; CX 1). Running parallel with Route 66, is the rail line of the Union Pacific Railroad (Tr. 17; CX 1). Union Pacific delivers approximately 15 railcars each day, except on Sundays (Tr. 17-8). The railcars are delivered on to U.S. Silica property, pushed up a 3% grade by a Union Pacific locomotive, left on a storage track and secured by the railcar's hand brake and a skid plate (Tr. 18; CX 1, shown as Letter C). When fully loaded, each car weighs approximately 250,000 pounds (Tr. 17).

i. Loading the Rail Cars Using the Gravity Drop Method

Until U.S. Silica purchased the Track Mobile, the empty cars were “gravity dropped” from their storage area, down the 3% grade and into position for loading (Tr. 18). The main job of a Sand Loader is to maneuver and fill railcars at the facility (Tr. 44). To perform this maneuver, a Sand Loader gets on the empty railcar, releases its hand brake and moves them three at a time (Tr. 18; CPX 8). Using only the hand brake, the Sand Loader would allow the car to roll down the 3% grade to the loading area. The Sand Loader rolls the car down and into position where the hatch on top of the enclosed car lines up with the loading chute (Tr. 20). At that point the sand loader would reengage the hand brake and stop the car under a loading chute (Tr. 18). There are four loading chutes in line, running parallel to the rail tracks (Tr. 20).

Once the car is secured by the hand brake, the Sand Loader places a skid plate in front of the car as an additional safety step to prevent the car from rolling (Tr. 20). The Sand Loader climbs up to a loading area, dons safety equipment to prevent injuries from falling off the car and

ties himself off (*Id.*; Tr. 89). He walks across the top of the car, lowers the chute and fills the car with sand (*Id.*). When he has filled the first hatch in the car, he will climb down, remove the skid plate, release the hand brake and move the cars a few feet to line the chute up with the second loading hole on the car (*Id.*). This process is repeated until the entire car or group of cars is fully loaded (*Id.*).

Sand Loaders will load one to three cars at a time (Tr. 21). Once the cars are ready, the Sand Loader removes the skid plate and releases the hand brake once again (Tr. 20-1). The cars roll by gravity across a rolling scale to pick up the weight of each car (Tr. 21). The rolling scale records the weight and Sand Loaders input it into their enterprise management system, which tracks the car number and the weight (*Id.*). Once the weighing process is complete, the Sand Loader continues across Route 66, with two other members of Local 110 acting as flaggers to stop oncoming traffic (Tr. 21, 23). The cars are stored across the highway until Union Pacific arrives to haul them away (Tr. 21). This occurs Monday through Saturday (Tr. 18). Once the cars are safely secured across Route 66, the Sand Loader walks back across the highway, up to the storage track and repeats the process with empty railcars (Tr. 21). While railcars are being filled, Sand Loaders are also filling customer trucks with sand for over-the-road shipping (Tr. 21). In a 24-hour day, Sand Loaders will load approximately 15 railcars (Tr. 21). Members of the Operating Engineers have never performed this job (Tr. 22).

ii. The Purchase of the Track Mobile

The Track Mobile was purchased in early March 2015 and arrived on-site on March 27, 2015 (Tr. 33). Scott Conroy (“Conroy”), the Plant Manager, testified that the Company purchased the Track Mobile because “we wanted to get away from gravity movement of cars. You know, it’s a safer way of doing it with the Track Mobile, so that was mainly – that was the main reason” (Tr. 33). When the Operating Engineers learned that U.S. Silica would purchase

the Track Mobile, they met with Conroy in March 2015 to discuss it (Tr. 31). Conroy told Erick Coleman, Shop Steward for Local 513 that the Company would train Sand Loaders to operate the Track Mobile (*Id.*).

In determining that the work belonged to the Laborers, the Company examined the respective collective bargaining agreements with the Laborers and the Operating Engineers (Tr. 30). Local 513's Contract lists only four job classifications, backhoe operator, dozer operator, front-end loader operator, and crane operator. Local 110's Contract specifically excludes backhoe operators, dozer operators, front-end loader operators and crane operators (Tr. 30; CX 6). The Operating Engineers Contract excluded individual classifications, including "Sand Loaders" (Tr. 30; CX 5).

It would be highly inefficient to use somebody from out in the mine, i.e. a Local 513 employee for this job (Tr. 30). The Operating Engineer on each shift is working over a mile from the loading area and would have to leave his equipment and his job, get into a company pick-up truck and traverse a gravel mine road with steep elevation changes (Tr. 36-7). The Operator would then drive through an old underground mine and tunnel to the processing plant (Tr. 37). This drive takes between five and ten minutes, each way (*Id.*). Once he used the Track Mobile, the Operating Engineer must drive back through the tunnel and down the mine road to get to his equipment in the mine pit (*Id.*). While the Sand Loader would load the car, the Operating Engineer would have nothing to do but wait to move the car so the next compartment could be loaded (*Id.*). While the Operating Engineer would be operating the Track Mobile, no one would be doing his job in the mine (Tr. 39-40). Additionally, Local 513 members have no training in Sand Loader functions, computer systems or safety protocols for moving railcars around the facility (Tr. 24).

iii. Training on the Track Mobile

The Company began training in April 2015 and is currently training 15 Laborers in the operation of the Track Mobile (Tr. 48). This includes all of the Sand Loaders and Utility Operators previously trained to gravity drop railcars (*Id.*). First, the Company brought in the Track Mobile manufacturer to train the employees on how to operate the machine (Tr. 49). Next, the Company brought individuals from a sister plant in Milwaukee that has a Track Mobile to train employees on how to use the machine within the business needs of the facility (*Id.*). Additionally, the on-site safety coordinator, Tammy Metcalf (“Metcalf”), has performed on-site training on proper use of the machine and safety protocols for employees (Tr. 50-1; CX 7).

Metcalf, working with three members of the Laborers union, created the “job functions analysis” for proper use of the Track Mobile in the moving and loading of railcars (Tr. 52; CX 8). This document was created through collaboration between Metcalf and three Laborers with gravity drop experience (Tr. 52).

iv. Loading the Railcars Using the Track Mobile

Under the new method, a trained member of Laborer’s Local 110 operates the Track Mobile like a small rail locomotive (Tr. 22). It has steel wheels for working on the railroad track and retractable tires for use on regular roads (Tr. 22; CPX 8). The process is essentially the same. Union Pacific delivers empty cars to the storage track (Tr. 22). A Sand Loader, with the help of a conductor on the ground (also a member of Local 110), drives the Track Mobile up the 3% grade and with the conductor’s assistance positions it to couple with empty railcars (Tr. 23; CX 7; CX 9). The Sand Loader will couple the cars to the Track Mobile and then pull the cars down the grade and into position under the loading chute (Tr. 23).

The Sand Loader will secure the Track Mobile and perform his normal loading functions (Tr. 22-23). He climbs to the top of the car, ties himself off, dons safety equipment and fills each

compartment of the car (Tr. 20). After each compartment is filled, he gets down, returns to the Track Mobile and moves the car a few feet to line up the chute with the next compartment, repeating the process until the cars are full (*Id.*).

After the cars are full, the Sand Loader secures the cars using the hand brake, uncouples the Track Mobile and extends the rubber wheels (Tr. 72, 102; CPX 3). The Track Mobile leaves the railroad tracks and moves like a normal truck or other wheeled vehicle (*Id.*). The Sand Loader drives the Track Mobile around to the rear of the three cars and couples with the fully loaded cars (*Id.*). Next, the Sand Loader pushes the cars across the rolling scale, using the same computer system to inventory the contents and, with the help of flaggers (Local 110 members), pushes the full cars across the street into the holding area for Union Pacific to take away each day (Tr. 23-24). The Sand Loader uncouples the Track Mobile and moves it back across the highway, up the 3% grade to the storage area (*Id.*). At that point the Sand Loader will repeat the entire process of filling cars, with help from the conductor on the ground.

The Track Mobile is not in continuous use. On certain days, when the facility is supplying a barge in St. Louis, U.S. Silica does not fill railcars (Tr. 24). Sand Loaders spend the entire day loading over-the-road trucks to transport product to the waiting barge (*Id.*). A barge holds about 1800 tons of sand, which amounts to 72 fully loaded trucks (Tr. 25). The facility supplies barges one to three times per week (Tr. 26).

v. The Work in Dispute

On March 30, 2015, the Operating Engineers filed a grievance with U.S. Silica over the use of the Track Mobile (Tr. 33; CX 3). The grievance specifically states “International Union of Operating Engineers, Local 513 demands that this work be performed by the Bargaining Unit members pursuant to the Collective Bargaining Agreement dated August 1, 2012 through July 31, 2015” (CX 3). Scott Conroy understood the grievance as a demand by Local 513 to have

bargaining unit members operate the Track Mobile (Tr. 34-5). The grievance further states “They have assigned a Track Mobile, which is mobile equipment, to outside of the bargaining unit. This job of moving rail cars has historically been done by the Bargaining Unit represented by the Operating Engineers with a loader” (Tr. 35; CX 3). Local 513 demanded arbitration on this issue on April 17, 2015 (Tr. 67; CPX 1).

On May 18, 2015, Laborers 110 informed Conroy that any attempt to remove Track Mobile work from the Laborers would cause a picket. (Tr. 41-2; CX 4). Conroy had no reason to believe the Laborers threat to picket was not serious (Tr. 42). Conroy also testified there is no agreed upon alternate means to resolve this dispute between Local 513, Local 110 and the Company (Tr. 42).

vi. The Use of Other Wheeled Vehicles at the Facility

While members of the Operating Engineers do utilize large wheeled vehicles in their mine operations, Local 110 also utilizes heavy trucks (Tr. 76-7). For comparison, Conroy identified the Track Mobile (CPX 3) and compared it with the Euclid truck (CPX 5). Laborers operate both heavy machines. The record testimony indicates that members of Local 110 use all kinds of heavy, mobile equipment at the facility, in addition to the Track Mobile. “We operate on a regular basis forklifts. We operate a rental dingo, which is kind of a stand-up tract bobcat without a cab....A pickup truck, the haul truck, manlifts, boom trucks...transloader, water trucks. And for maintenance purposes we allow 110 to operate the dozer, front-end loader and excavator” (Tr. 92). Local 513 introduced no evidence to support any contention that they exclusively operate wheeled or mobile vehicles at the facility.

II. ARGUMENT

A. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the National Labor Relations Act, there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. This standard requires finding that there is reasonable cause to believe there are competing claims to the disputed work among rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute. *See Electrical Workers Local 3*, 342 NLRB 173, 174 (2004). Additionally, the Board will not proceed under Section 10(k) if there is an agreed-upon method for voluntary adjustment of the dispute. The record evidence supports each prerequisite and no evidence was presented at the hearing to rebut the applicability of the Act in this instance.

i. The Record Evidence Confirms Competing Claims for the Work

At the hearing, Local 513 contended that it never made a claim for the work in dispute (Tr. 9-10). This argument goes against the clear weight of the evidence. Local 513's grievance to U.S. Silica specifically demands that 513 bargaining unit members operate the Track Mobile and perform the work of moving railcars using the machine (CX 3). Further, Local 513 demanded arbitration on this grievance. (CPX 1) Also, in conjunction with the explicit grievance, Conroy credibly testified that he believed, based upon two discussions with Local 513 representatives, that Local 513 was claiming the work of operating the Track Mobile (Tr.34-5). Local 513 presented no evidence to rebut the statements made in the grievance or in contradiction with Conroy's understanding of the issue.

Local 513 also claims the Board should quash the notice of Section 10(k) hearing because it effectively disclaimed any interest in the disputed work, through its filing to the Board on July 6, 2015. The Company does not believe that Local 513's disclaimer is effective.

Finally, the record evidence shows that Local 110 made a credible demand to retain the work Local 513 sought arbitration over. Local 110's demand was accompanied by a threat to picket the facility should the work be moved to Local 513 (CX 4). Conroy testified that he believed the Laborers threat was credible. Local 110's threatened picket and Local 513's demand for arbitration on this issue created a valid jurisdictional dispute. The only evidence in the record supports a finding that there were competing claims for the work.

ii. Local 110 Presented a Valid Threat of Picket, Proscribed by the Act

As discussed in the previous section, Local 110 threatened an impermissible picket over Local 513's pursuit of the work of operating the Track Mobile and notified the Company of its position on May 18, 2015 (CX 4). See *Electrical Workers Local 134*, 339 NLRB 123, 125 (2003) (finding reasonable cause to believe that a union used "proscribed means" where an object of its picketing was to obtain the assignment of disputed work).

iii. No Method of Voluntary Dispute Resolution Exists.

The only evidence in the record as to this requirement comes from Scott Conroy. There is no voluntary method for the adjustment of this kind of dispute, agreed upon by the parties (Tr. 42). Further, an examination of the CBAs in effect between the Company, Local 110 and Local 513 provide no evidence of any voluntary method for the adjustment of this dispute (CX 5; CX 6).

B. Merits of Dispute

As the Board has stated in *Electrical Workers Local 3*, supra at 175–176,

[t]he grant of authority in Section 10(k) for the Board to "hear and determine" jurisdictional disputes requires the Board to make an affirmative award of the disputed work to one of the groups of employees involved in the dispute. While the Act does not set out the standards the Board is to apply in making this determination, the Supreme Court has explained that "experience and common sense will supply the grounds for the performance of this job which Congress has assigned the Board."

The Board has held that in making the determination that the Supreme Court found was required by Section 10(k), “it would consider ‘all relevant factors,’ and that its determination in a jurisdictional dispute would be an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case.” Id. At 175–176 (citations omitted). The Board generally considers several factors as outlined below.

i. Certifications of the Competing Unions and Their Respective CBAs.

There is no evidence in the record to confirm that either union was certified. However, U.S. Silica and the predecessor owners of the facility have a long-term relationship with both Local 513 and Local 110 and both unions are parties to separate collective bargaining agreements with the Company.

The CBAs weigh in favor of Local 110. Local 513’s CBA specifies only four job classifications, backhoe, crane, dozer and front-end loader operators. It specifically excludes classifications found in the Local 110’s agreement, including “Sand Loaders” (CX 5). The Sand Loaders main job is to move and fill railcars at the facility (Tr. 44).

The current Track Mobile operators are Sand Loaders, who use the Track Mobile to move railcars into position so they can load the cars with sand. The Track Mobile is merely a piece of equipment that makes it easier and safer for Sand Loaders to perform their historical duties, like a forklift that members of the Laborers union use to load bags of sand on to trucks. This equipment is there to increase efficiencies and minimize injuries. Further, the Laborer’s CBA expressly excludes only the classifications found in Local 513, namely backhoe, dozer, crane and front-end loader operators. This factor strongly weighs in favor of Local 110.

ii. U.S. Silica's Preference, Current Assignments and Past Practice

This factor most strongly favors Local 110. The employer has identified its preference for Local 110 in operating the Track Mobile. In identifying this preference, U.S. Silica points to several important factors. Sand Loaders have historically moved the railcars around the facility. They intimately know of the safety issues and dangers of moving railcars around the facility where other employees, truck drivers and other railcars are present. They are also well-versed in using the hand brakes and skid plates still utilized for safety precautions, even with the Track Mobile.

The past practice at the facility also strongly favors Local 110. The main function of the Sand Loader position has always been to move and load railcars at the facility. The one Operating Engineer on each shift is located over a mile away, in the mine pit, operating other heavy equipment. Calling an Operating Engineer up to the front of the facility to operate the Track Mobile is difficult and time consuming. It would also lead to excessive downtime in the pit. Additionally, members of the Laborers union have a long history of using large, mobile vehicles at the facility and have always done so. Local 513 can claim no exclusive right to operate heavy mobile equipment.

Finally, the Company has trained 15 members of Local 110 to operate the Track Mobile, at considerable time and expense. Those employees are currently operating the Track Mobile and the gravity drop system has been suspended completely. All of these factors strongly support Local 110's claim to the work and none of them were rebutted by Local 513 at the hearing on this matter.

iii. Industry practice

There is no evidence of industry practice to assist the parties. U.S. Silica has six facilities with Track Mobiles, including Pacific (Tr. 75). None of the other facilities have either the

Laborers or the Operating Engineers operating the Track Mobile (Tr. 76). This factor does not support either union's claim to the work.

iv. Relative skills and training

Historically, Sand Loaders were trained in the safe movement of railcars around the facility. The Company has trained approximately 15 members of the Laborers Union to use this piece of equipment. Many of those skills such as car and track inspection, lining up the cars with the chutes, coupling and uncoupling cars, and the physical operation of loading and weighing the cars are known only to Local 110 employees. Local 513 members have no training in these areas and have only ever moved railcars sporadically.

U.S. Silica has presented testimony that prior to operating the Track Mobile involved in performing the disputed work Laborers-represented employees received significant training and seat time in the Track Mobile. The training comprised three types, one from the Track Mobile manufacturer, one from a sister facility and one on safe operation from the plant Safety Director. All railcars are being moved by the Track Mobile, operated by Local 110 members. Local 513 has presented no evidence as to their training on this or similar machines. This factor of relative skills and training favors awarding the disputed work to Laborers-represented employees.

v. Economy and efficiency of operations

The record evidence indicates it is more efficient to have a Sand Loader operating the Track Mobile. The Sand Loader is well-trained in lining up the cars with the silo chute. He has the requisite skills and safety training to climb atop the railcars and fill them. The Sand Loader can utilize his fellow laborers to assist him in flagging the loaded cars across the street.

All of the Local 110 members are working in or around the processing plant, making it more efficient to utilize them if there is downtime in between loading railcars. There is also 10-15 minutes of downtime while the Sand Loader fills a compartment, before the Track Mobile

will be used again to move the cars down the line. While the Sand Loader is loading the car, his conductor, another laborer, can easily walk back into the facility to perform other tasks. Once the cars are moved across the rolling scale they have to be inventoried using a computerized system that none of the current Operating Engineers are trained on.

In contrast to the ease with which the Laborers can perform this function, the Company would create wild inefficiencies by using a Local 513 Operator for Track Mobile work. All of the Operating Engineers at the site are working in the mine pit, over a mile away from the loading area. It takes 5-10 minutes by pick-up truck just to reach the loading area of the facility. If it is necessary for a Local 513 operator to come to the front of the facility, he must stop his own machine and secure it. Next he has to get into a company pickup truck, travel up a steep grade out of the mine pit and through an old underground mine now used for storage. He would have to park the pick-up truck and walk over to the storage track to operate the Track Mobile, get it into position and then wait 10-15 minutes while the Sand Loader filled it. During that period, no one is in the mine area doing the Local 513 Operator's regular job. Additionally, the Sand Loader would not be able to move or load railcars while he waited for the Local 513 Operator to arrive.

Finally, it would be wildly inefficient to hire an additional Operating Engineer to operate the Track Mobile full-time. The record testimony confirms that the Track Mobile is not used as often as three or four times a week. If the Company loads trucks for shipment on barges in St. Louis, it does not load railcars. The evidence indicates that there is sufficient downtime in between movements of the railcars and there is no work for a Local 513 Operator at the processing plant. He would effectively spend 20-30 minutes of each hour waiting to operate the Track Mobile, no more than three to four days a week. Additionally, the Sand Loaders

occasionally stop loading a railcar, midstream, to assist in loading customer trucks throughout the day. This would cause additional downtime for the Local 513 employee operating the Track Mobile.

Utilizing an Operating Engineer for this job would be extremely wasteful and inefficient. There can be no doubt from the evidence in the record that it is more efficient and economical for the laborers to perform this work, given the work structure and the physical set-up and size of the facility. The inefficiencies of having a Local 513 Operator operate the Track Mobile is the single largest factor in favor of Local 110

III. CONCLUSION

Despite Local 513's attempts to state otherwise. There is a valid dispute between Local 110 and Local 513 as to which union should operate the Track Mobile at the Pacific, Missouri plant. U.S. Silica urges the Board to see through Local 513's parlor tricks and ineffective, post-hearing disclaimer and decide the issue before it, pursuant to 10(k) of the National Labor Relations Act. Once the Board determines that a dispute exists, there is no evidence in the record to support Local 513's claim for the work. Each piece of testimony and each document introduced into evidence supports U.S. Silica's preference for having Local 110 perform the disputed work.

Respectfully Submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Matthew J. Kelley
Matthew J. Kelley
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
317.916.2537 (phone)
317.916.9076 (fax)

Jeremy C. Moritz
155 N. Wacker Drive, Suite 4300
Chicago, IL 60606
312.558.1420 (phone)
312.807.3619 (fax)

Dated: July 17, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all parties of record listed below via the Board's E-Filing system and by mailing a copy of the same via U.S. mail, first class, postage prepaid on this 17 day of July, 2015:

James I Singer
1221 Locust Street - Suite 250
Saint Louis, MO 63103
Email: jis@schuchatcw.com

James P. Faul
Hartnett Gladney Hetteiman, L.L.C.
4399 Laclede Avenue
Saint Louis, MO 63108-2248
Email: jfaul@hghllc.net

/s/ Matthew J. Kelley
Matthew J. Kelley

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
111 Monument Circle, Suite 4600
Indianapolis, IN 46204

21819349.1